



June 15, 2017

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**RE: Connect America Fund, WC Docket No. 10-90, Universal Service Reform –
Mobility Fund, WT Docket No. 10-208**

Dear Ms. Dortch:

On Tuesday, June 13, 2017, the undersigned and Michael Romano, Senior Vice President-Industry and Affairs and Business Development, on behalf of NTCA–The Rural Broadband Association (“NTCA”), met with the following representatives of the Federal Communications Commission (“FCC” or “Commission”): Gary Michaels, Chelsea Fallon, Thomas Parisi, Kirk Burgee, Jim Schlichting, Michael Janson, Karen Sprung, Alex Minard, Chris Eberle, and Paroma Sanyal. The group discussed NTCA’s proposal for the Mobility Fund Phase II (“MF II”) challenge process.

Specifically, NTCA discussed the following challenge process:

- 1) Using the available Form 477 data, the Commission would publish a list tentatively identifying a) all census blocks in which an unaffiliated, unsubsidized mobile competitor(s) is believed to be able to provide voice and LTE data to all or a substantial portion of the geographic area in question; and b) areas for which no unsubsidized mobile competitor is identified that are therefore eligible for funding.
- 2) The identified unsubsidized competitor(s) would then have 60 days to file and serve on other potentially affected providers information to validate what is shown in terms of coverage on the Form 477 for purposes of a conclusive determination of competitive presence. This information should include an officer declaration certifying its ability to provide service in the area(s) that it claims to serve, along with technical support, including an engineering (propagation) map that demonstrates the claimed coverage. If no declaration of service and verifying information is filed, the competitor is presumed to not offer unsubsidized service in the census block(s) in question, notwithstanding the Form 477 report, and the area will be deemed eligible for MF II funding.

- 3) The notified competitor(s) would then be provided 30 days to challenge the submitted coverage claims. The competitor(s) may submit actual speed data from hardware- or software-based drive tests or app-based tests that spatially cover the challenged area. The submission would be substantiated by the certification of a qualified engineer.
- 4) The Commission would reach a decision based upon the information submitted by the interested parties, with the party declaring an area to be served and thus ineligible for MF II funding having the burden to prove an area is served by a preponderance of the evidence.

NTCA explained that this process would be data driven and consistent with the underlying requirement that ties the analysis of competition to specific geographic areas, and thus produce the most accurate results. It is also timely and efficient since the Commission would have the information necessary to make a determination within 90 days of its publication of a MF II ineligibility/eligibility list based on the 477 data.

NTCA also explained that this proposal is far less burdensome on small providers (and the FCC itself) than other proposals. NTCA's proposal would result in fewer challenges than proposals that presume coverage based on Form 477 data that is known to be faulty. NTCA also discussed proposals that would require all mobile providers to file simultaneously completely new Forms 477. While NTCA agreed the Commission should strive to collect complete and consistent data in the future that are better than current Form 477 data, this approach would unnecessarily delay the disbursement of MF II funds and compel FCC review of reams of information that may merely duplicate existing Forms 477 in many cases. Furthermore, all areas not served by an unsubsidized mobile provider, including those served by subsidized providers, will be eligible for MF II. Therefore, for MF II purposes it is only necessary to determine the contours served by unsubsidized providers to establish which areas are not eligible for funding.

NTCA further indicated that its members estimate that it takes 38 hours on average to complete a Form 477 (or 76 hours per year). The average NTCA member company responding to the survey has 20 employees and most rely on, and pay, consultants to complete the form. Given the scope of the determinations needed to implement the MF II program, requiring small providers to complete a new Form 477 for the sole purpose of determining MF II eligibility boundaries is unnecessary, burdensome, and contrary to the directives of the Regulatory Flexibility Act.¹

Finally, NTCA indicated that it supports reconsideration or clarification to confirm that unsubsidized competition does not exist where a would-be unsubsidized provider offers service to subscribers via collocation on a subsidized provider's tower. The Commission should make

¹ The Commission has a statutory duty to consider significant alternatives to reduce the burden of its rules on small providers. 5 U.S.C. § 601-12, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104-121, 110 Stat. 857 (1996)

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clear that only when a competitor builds a tower that provides overlapping coverage without leveraging supported network assets in any manner should an area be declared competitive and ineligible for MF II.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Jill Canfield

Jill Canfield

Vice President, Legal & Industry

Assistant General Counsel

cc: Gary Michaels
Chelsea Fallon
Thomas Parisi
Kirk Burgee
Jim Schlichting
Michael Janson
Karen Sprung
Alex Minard
Chris Eberle
Paroma Sanyal